

MCFA

Minor Crop Farmer Alliance

August 1, 2000

Mr. Jack E. Housenger
Acting Director, Special Review and Reregistration Division
c/o Public Information and Records Integrity Branch [PIRIB]
Information Resources and Services Division (7502C)
Office of Pesticide Programs (OPP)
Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

Re: **Methyl Parathion; Notice of Proposed Tolerance Revocations and Channels
of Trade Provision Guidance -- Docket Control Number OPP-300976**

Dear Mr. Housenger:

The following comments are submitted on behalf of the members of the Minor Crop Farmer Alliance (MCFA) on the subject proposed rule published in the Federal Register on June 2, 2000 (65 Fed. Reg. 35307-12). MCFA is an alliance of more than one hundred national and regional organizations and individuals representing growers, shippers, packers, handlers, and processors of various agricultural commodities, including food, fiber, nursery and horticultural products, and organizations involved with public health pesticides. MCFA has been very involved in issues concerning pesticides, including the implementation of the Food Quality Protection Act of 1999 (FQPA).

The members of MCFA have significant concerns with the approach being advocated by the Agency in the subject proposed rule. While these concerns have been expressed to various representatives of the Agency, the U.S. Department of Agriculture and the Food and Drug Administration prior to the publication of the proposed rule, we are restating our concerns herein with the hope that our comments may evoke additional thought and consideration by the Agency, resulting in appropriate adjustments to the final rule concerning this matter.

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Background

In its proposed rule, EPA is announcing its intention to revoke certain tolerances applicable to methyl parathion residues in or on various agricultural commodities, principally fruits and vegetables. The Agency asserts that its action is in response to action by the registrants of methyl parathion requesting voluntary cancellation of the associated uses of methyl parathion from the existing product registrations. The Agency asserts that revocation of the tolerances in question is governed by section 408(1)(2) of the Federal Food, Drug and Cosmetic Act, as amended, (FFDCA) 21 U.S.C. 346a(1)(2). As such, revocation of the tolerances in question is to occur no later than 180 days after use of the cancelled pesticide became unlawful. This would be 180 days after December 31, 1999, or approximately July 1, 2000.

There are two additional matters to be noted prior to discussing our substantive comments in opposition to the proposed rule. First, on August 3, 1999, in announcing the voluntary cancellation of the uses in question, the Administrator emphatically stated that the current food supply was safe and that the Agency's action would "make the food supply safer". The Agency's action was part of its "overall effort to reduce risks to the food supply under the Congressional mandate imposed by the Food Quality Protection Act (FQPA)". 65 Fed. Reg. at 35309.

Second, various representatives of the Agency have advised that the policy reflected in the proposed rule for methyl parathion, will be followed for other similar pesticides where there are "voluntary" actions by registrants to cancel uses. This will likely include pesticides that may have a greater persistence or prevalence in foods than methyl parathion. Consequently, we are very concerned with the precedent that the Agency is attempting to establish through the proposed rule.

The Importance Of Pesticide Tolerances

Pesticide tolerances play a critical role in the marketing of fresh and processed foods treated with pesticides. They provide a well-understood standard for determining the legal status of a food. Historically, when pesticide uses were voluntarily cancelled, the Agency recognized that there may be significant inventories of foods, particularly processed foods such as juice concentrate, paste etc., which may contain pesticide residues of the voluntarily cancelled product, and which required several years to be distributed in the channels of trade. In view of this, when confronted with a use that was voluntarily cancelled, the Agency would not formally revoke the associated tolerance, until it was reasonably certain that the channels of trade were clear of potentially treated food. This approach helped assure that the potential to disrupt commerce was minimized.

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The Proposed Rule's Potential To Disrupt The Orderly Marketing Of Food

The premature revocation of tolerance as reflected in the subject proposed rule could cause significant market disruption, both domestically and internationally. Without the protection afforded by a tolerance, commercial businesses will be reluctant to purchase foods (including fresh and processed foods) which may have been treated with the voluntarily cancelled pesticide. Rather than assume the burden of establishing that the conditions of the "Safe Harbor" or "Channels of Trade" guidance offered by the Food and Drug Administration have been met, the commercial buyer will simply refuse to purchase foods that may have been treated with the pesticide. This will disrupt the orderly marketing of such foods and will have clear market impacts on the value of such foods. The Agency need only review the impacts of the Alar debacle to refresh itself on the potential negative effects of governmental action.

Additionally, a number of foreign countries e.g. Taiwan, rely on U.S. tolerances to address pesticide residue issues associated with imports. If those tolerances do not exist, U.S. food exports may be adversely affected.

The Safety Of The Food Supply Is Not An Issue

EPA's actions prematurely revoking a tolerance in such circumstances will not make the food supply "safe". It will only assure that value is taken out of the market with no corresponding public benefit.

As noted above, in making her announcement regarding the voluntary action taken by the registrants of methyl parathion, the Administrator stressed that the food supply was safe. She never cautioned people to not eat foods, even those that might contain residues of methyl parathion. Presumably, if she felt that methyl parathion residues in such foods constituted a significant threat to public health, appropriate steps could have been taken to prevent the marketing of such foods. At a minimum, one would have expected the Administrator to advise people not to consume such foods if she believed that such food was not safe to consume, particularly for infants and children.

It is clear that the issue regarding appropriate timing for the revocation of tolerances in this instance is not a safety issue, but rather a marketing issue. While some may attempt to portray the tolerance issue as a safety/risk issue, clearly it is not. Rather, the industry and the Agency should be able to agree that the central issue in this debate is how the treated food will be distributed, not whether it should be distributed.

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The Agency Has The Authority To Appropriately Revise The Proposed Rule

MCFA believes that the Agency can interpret Section 408 of the FFDCA in such a manner as to avoid the premature revocation of tolerances in instances where an associated use has been voluntarily cancelled by the registrant. First, in reviewing the legislative history of section 408, there is nothing to indicate that Congress believed that section 408(1)(2) would apply in those instances where a voluntary cancellation of a use had been taken by a registrant. If Congress had understood that EPA intended to apply section 408(1)(2) to situations involving voluntary cancellation, it would be reasonable to expect that there would have been significant additional debate on this important matter.

Second, the words of the statute itself indicate that it was not intended to apply in situations of a voluntary cancellation by a registrant. Specifically, section 408(1)(2) provides, in applicable part, that

"If the Administrator, acting under the Federal Insecticide, Fungicide, and Rodenticide Act, cancels the registration. . . ." 21
USC 346a(1)(2) (emphasis added)

In the case of methyl parathion, the Agency has made it abundantly clear that the action being taken was the result of a voluntary cancellation of uses by the registrants. The Agency took great care to make clear that such action was not the result of a cancellation order by the Administrator directing the cancellation of uses. One might term an action by the Administrator to order the cancellation of a use as an "involuntary" cancellation.

It is believed that section 408(1)(2) should be limited to those circumstances involving an involuntary cancellation. Such an approach would make sense. In such circumstance, if the Administrator wants to issue an order to cancel a pesticide registration, then pursuant to Section 6(b) of FIFRA (7 U.S.C. 136d(b)) the registrant, and other adversely affected parties have the right to request a hearing and probe the reliability of the predicates underlying the Administrator's action, including the rigor of the data supporting the Administrator's action. In a voluntary cancellation situation however, such hearing right does not exist. Therefore, the underlying basis for the Administrator's actions cannot be tested in an Agency proceeding. Consequently, we believe that Congress intended the reference in Section 408(1)(2) of the FFDCA to the Administrator canceling a registration, to apply to a Section 6(b) FIFRA cancellation order.

The Proposed Rule Is Counter Productive To Public Policy Goals

The Agency's position as reflected in the proposed rule may be counter productive to the Agency's overall public policy goals. Specifically, the Agency's position may well result in

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registrants receiving increased pressure to not voluntarily cancel a use. Based on past history, if the Agency initiated an involuntary cancellation pursuant to Section 6(b) of FIFRA, such action would take several years to resolve. During that time, tolerances would remain in effect to address the uses that remain in effect. In comparison, under the policy reflected in the proposed rule, with a voluntary cancellation, the applicable tolerances would be eliminated almost immediately, not allowing sufficient time for the orderly distribution of treated foods. It would appear therefore that there would be an incentive to encourage registrants to not submit requests for voluntary cancellations, but rather have the Agency proceed with involuntary cancellation notices if it believed action curtailing use of a compound was warranted.

Conclusion

This Administration has a very clear choice in this matter. It can adopt an interpretation of the statute which facilitates the orderly marketing of foods or it can adopt a system which raises a clear potential for market disruption. Again, this is not an issue of safety; it is a matter of process. We remain hopeful that upon reflection, the Agency will re-think its position.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Botts", followed by a horizontal line and the letters "EMR".

Daniel Botts
Chairman, MCFA Technical Committee

A Duda & Sons
Alger Farms
American Dehydrated Onion
& Garlic Association
American Farm Bureau Federation
American Mosquito Control Association
American Nursery and Landscape Association
American Seed Association
Atlantic County Board of Agriculture
Brewster Heights Packing
California Ag Issues Forum
California Avocado Commission
California Canning Peach Association
California Cherry Advisory Board
California Citrus Mutual
California Citrus Quality Council

California Cut Flower Commission
California Farm Bureau Federation
California Fig Advisory Board
California Grape & Tree Fruit League
California Pistachio Commission
California Prune Board
California Seed Association
California Strawberry Commission
California Tree Fruit Agreement
Cherry Marketing Institute
Consumer Produce Company
Cranberry Institute
D'Arrigo Brothers
DeBruyn Produce Company
Del Monte Foods
Diamond Produce

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Dried Fruit Association of California	Oregon Raspberry & Blackberry Commission
Florida Citrus Mutual	Ostrom Farms
Florida Citrus Packers	Pacific Coast Canned Pear Service
Florida Farm Bureau Federation	Pacific Seedmen's Association
Florida Nurserymen & Growers Association	Processed Tomato Foundation
Florida Fruit & Vegetable Association	Pear Advisory Board
Frank Capurra & Sons	Pear Bureau Northwest
Fresh Produce & Floral Council	Produce Marketing Association
Grower Shipper Vegetable Association of Central California	R.C. Farms
Hillsborough County Farm Bureau (Florida)	Rio Grande Okra Sales, Inc.
Holden Wallace, Inc.	Rio Queen, Inc.
Idaho Potato Commission	Robert Ruiz, Inc.
Interstate Fruit & Vegetable Company	Roses Inc.
Lee County Mosquito Control District	Society of American Florists
Major Farms	SoilServ, Inc.
McManus-Wyatt-Hidalgo Produce Marketing Company	South Carolina Tomato Growers Association
Merrill Farms	Starr Produce Company
Michigan Asparagus and Plum Advisory Board	Tanimura & Antle, Inc.
Michigan Celery Promotion Cooperative, Inc.	Texas Citrus Mutual
Michigan Farm Bureau	Texas Nursery & Landscape Association
Michigan Onion Committee	Texas Produce Association
Michigan Vegetable Council	Texas Vegetable Association
National Christmas Tree Association	Tree Top, Inc.
National Council of Farmer Cooperatives	U.S. Apple Association
National Food Processors Association	U.S. Canola Association
National Onion Association	U.S. Hop Industry Plant Protection Committee
National Potato Council	United Fresh Fruit and Vegetable Association
National Watermelon Association	USA Dry Pea & Lentil Council
New York State Vegetable Growers Association	Val Verde Vegetable Company
North American Strawberry Growers Association	Valley Fruit & Vegetable Company
North Central Washington Fieldman's Association	Virginia Farm Bureau Federation
Northwest Food Processors Association	Washington Hop Commission
Northwest Horticultural Council	Washington State Horticultural Association
Ocean Mist Farms	Washington State Potato Commission
Ocean Spray	Western Growers Association
Ohio Fruit Growers Society	Western Washington Farm Crops
Ohio Vegetable & Potato Growers Association	Wiesehan Farms, Inc.
	Wild Blueberry Commission of Maine
	Wisconsin Ginseng Growers Association
	Yakima Pomological Club

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